

# Washington Tariff & Trade Letter®

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301-570-4544 Fax 301-570-4545

Vol. 25, No. 23

June 6, 2005

## COMPANY, EXECUTIVES TO PAY \$5.4 MILLION FINE FOR NAFTA VIOLATIONS

In one of the first prosecutions for violations of the North American Free Trade Agreement (NAFTA), a California firm and three of its executives have pled guilty to a two-count information charging them with avoiding duties on imports from Mexico by falsely stating the value of goods that were out of quota. Triunfo-Mex, Inc., of City of Industry, Calif., Eriberto Candelario, Cristina Candelario and Josefina Candelario, agreed in San Diego U.S. District Court to reimburse Customs for \$3.5 million in underpaid tariffs and pay a fine of \$2.1 million under a May 12 plea agreement that is still subject to court approval.

According to the San Diego U.S. Attorney's office, Triunfo-Mex imports a wide variety of Mexican food products, health and beauty aids, detergents and candy from its affiliate in Mexico, Productos Mexicanos El Triunfo SA de CA and distributes them through retail outlets in the U.S. Among those imports were condensed milk and instant drink mixes that are subject to quotas.

"Prior to the time that the quota was reached for a particular item, the unit price Triunfo-Mex declared on the documents accompanying the merchandise was the true unit price," the U.S. Attorney's office explained. "The defendants admitted, however, that once the quota was reached, the unit price declared for the item dropped to approximately one tenth of the previously declared value for the same merchandise," it continued.

Triunfo-Mex was charged with entry of goods falsely classified under U.S. Code Title 18 Section 541. The three executives were charged with entry of goods upon payment of less than legal duty in violation of Title 18 Section 541. The case resulted from an investigation by the Immigration and Customs Enforcement Bureau.

## ITC REPORT FINDS SMALL IMPACT FROM RECENT TRADE PACTS

One argument supporters of bilateral free trade agreements (FTAs) could make – but won't – is that these little deals are no big deal to the U.S. economy. Despite the dire consequences attributed to FTAs, especially the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), and the inflated projections of their benefits, a new report from the International Trade Commission (ITC) claims FTAs with Chile, Singapore and Australia have had "relatively small" impact on U.S. trade and mostly result in diversion of trade from non-FTA countries.

Although the Chile and Singapore accords have been in effect only since Jan. 1, 2004 and the Australian deal became effective Jan. 1, 2005, the ITC used economic simulation models to

Copyright © 2005 Gilston-Kalin Communications, LLC. All rights reserved. Reproduction, copying, electronic retransmission or entry to database without written permission of the publisher is prohibited by law.

Published weekly 50 times a year except last week in August and December. Subscription in printed or electronic form is \$597 a year in U.S., Canada & Mexico; \$627 Overseas. Additional copies with full price subscription are \$75 each.  
Circulation Manager: Elayne F. Gilston

extrapolate early trade data into a long-term picture of their economic importance. Among the reasons for the small effect of these deals is the small size of the economies of the three FTA partners compared to the \$11 trillion U.S. economy. On a purchasing power parity basis, the three FTA partners had a combined GDP of just over \$900 billion in 2004.

Another reason is the suggestion that preferential trade deals, such as FTAs, merely divert exports and imports from countries that don't have similar agreements. Such trade diversion, which the ITC calls welfare reducing, displaces lower-cost domestic production. In effect, cheap goods just get cheaper. In comparison, multilateral trade liberalization on a normal-trade-relations (NTR) basis, such as the Doha Round, is trade creating and welfare enhancing because it replaces higher-cost domestic production.

The ITC report, "The Impact of Trade Agreements Implemented Under Trade Promotion Authority" (ITC Pub. No. 3780) was mandated by statute as part of the president's request for extension of fast-track negotiating authority. It looked specifically at trade in agriculture, fruit, macadamia nuts, grains, meats, textiles, apparel, footwear, pharmaceuticals and services.

"In general, the three trade agreements are expected to have small effects on U.S. trade in the covered products," the ITC concluded. It expects increases in imports of fruits, meat, textiles and apparel. "Effects on U.S. exports are expected to be negligible or very small. As a direct result of the trade agreements, trade in services is not expected to show measurable change."

While the ITC report doesn't address the trade impact of DR-CAFTA, the implications of its findings suggest the pending accord would have an even smaller effect than the already ratified ones. The combined GDP of the six Central American and Caribbean partners is about one-third of that of Chile, Singapore and Australia together. Their total work force is 20% smaller.

## **LONG, SLOW LITIGATION EXPECTED OVER AIRCRAFT SUBSIDIES**

With the collapse of the negotiations approach to resolving their dispute over large airplane subsidies, the U.S. and European Union (EU) are likely to settle into a long, protracted litigation in the World Trade Organization (WTO). By bringing the fight over alleged unfair subsidies for Airbus and Boeing to the trade body, the U.S. and Europe have started a process that will last beyond the new December 2006 deadline for completing the Doha Round. That may help prevent the dispute from disrupting those trade talks. At the same time, both sides say they are still open to a negotiated deal to resolve the dispute prior to any final WTO ruling.

For the Bush administration, taking the case to the WTO helps counter some of the criticism it has received for not being as aggressive as the Clinton administration in launching WTO complaints against unfair foreign trade practices. Blunting those charges will be important in getting the DR-CAFTA approved as well as any deal coming out of the Doha Round. The Airbus case is likely to be the first of several complaints the administration will now take to the WTO, including one against China's failure to enforce copyright protection, in an effort to show it can be "tough" on trade law enforcement.

The collapse of the truce and bilateral talks that started in February was precipitated by Washington's expectation that the EU was preparing to provide new launch aid for the A350 aircraft, a plane that would compete directly with Boeing's 787 Dreamliner. While the EU may go ahead with that assistance now, the trade cases at the WTO could raise doubts among potential Airbus customers over the financing for future aircraft purchases of the A350 as well as the jumbo A380. If the U.S. complaint can dampen sales for those airplanes, Washington may feel it has succeeded regardless of the ultimate conclusion of the dispute-settlement process.

But both the EU and U.S. may be unsatisfied with outcome their WTO complaints, suggests Claude Barfield, international trade scholar with the American Enterprise Institute. Because

the Uruguay Round agreement on subsidies specifically excluded aircraft trade from its coverage those rules cannot be applied directly to aircraft trade, he notes. "Even if the panel brushed pass that, you still might have a messy solution," Barfield argues. He points to footnotes in the sections of the Agreement on Subsidies and Countervailing Measures dealing with actionable and nonactionable subsidies which say: "Since it is anticipated that civil aircraft will be subject to specific multilateral rules, the provisions of this subparagraph do not apply to that product."

Another wrinkle in the dispute was added May 25 when the House approved the 2006 National Defense Authorization Act (NDAA) with a provision that would bar the Pentagon from procuring goods or services from any foreign person "to which the government of a foreign country that is a member of the World Trade Organization has provided a subsidy." Clearly aimed at European defense firms seeking Pentagon business, NDAA Section 817 would apply if the U.S. has requested consultation with the foreign country under the WTO dispute-settlement process and either case has not been resolved or the WTO has ruled the subsidy is prohibited.

### **FORMULA FOR CUTTING FARM TARIFF BECOMES NEW HURDLE**

Having tentatively resolved the challenge of how to convert non-ad valorem agriculture tariffs into ad valorem equivalents (AVE), Doha Round negotiators meeting June 2-3 in Geneva got embroiled in the next key issue they face: what formula to use to cut tariffs in the market access pillar of the talks (see **WTTL**, May 9, page 3). The tariff-cutting element of the market access pillar in the agriculture talks has not been addressed since trade ministers reached their "framework" for a farm deal during the WTO General Counsel meeting in July 2004.

The U.S. and Cairns Group of agriculture exporting countries are pressing for adoption of the so-called "Swiss formula" which would require bigger cuts on higher tariff. But at the meeting, they received strong resistance from developing countries and developed countries with highly protected farm sectors, the G-10, who want to use the same across the border approach used in the Uruguay Round.

Even though there has been a general agreement to create "tiers" of tariff levels with different rates of cuts in each tier, there continues to be disagreement over the formulas to use within each tier. Negotiators are considering a Canadian proposal that would try to meld the different formulas with varying rate cuts in each tier. Doha Agriculture Committee Chairman Tim Groser, New Zealand's ambassador to the WTO, said he would attempt to have a "first approximation" of a possible agriculture agreement ready by the end of July.

While that draft will attempt to deal with each of the three pillars of the farm talks – export subsidies, domestic support and market access -- it won't offer detailed "modalities" on how to cut tariffs in each of the tiers, Groser told the committee June 3. The farm talks could face a new hiccup this summer, if Groser, who has won praise for his handling of the negotiations, leaves his WTO post. There are reports he may return to New Zealand to run for parliament.

Meanwhile, the European Union intends to reinvigorate its demands for stronger WTO rules to protect geographical indications, according to John Bensted-Smith, director of agriculture analysis in the EU's agriculture section. With the reform of its Common Agriculture Policy (CAP), the EU is moving toward the complete decoupling of farm support from production to direct payments to farmers, along with the reduction of export subsidies, he explained at a Washington briefing May 31. As a result, farmers are shifting to higher-value products where geographical indications provide a comparative advantage, he said.

### **U.S., EU PRESENT NEW SERVICES OFFERS IN DOHA ROUND TALKS**

Both the U.S. and EU have submitted new and improved offers to open their services sectors as part of a new push to get the stalled Doha Round talks on services moving (see **WTTL**, May 23, page 2). Washington's new offer provides for further liberalization of the movement of

services professionals into the U.S. on a temporary basis – so-called Mode 4 of the services talks -- and also significantly increases foreign access to the express delivery business. The U.S. also has revised the description of each of the service sectors in its offer to reflect the numbering system developed by the United Nations Provisional Central Products Classification (UNCPC). Use of the UNCPC code reduced the special exemptions claimed by the U.S.

The EU has revised its earlier services offer to extend its commitments to the 10 new members of the EU. As the U.S., it also has offered to grant more liberal treatment of temporary workers under Mode 4. Other improvements were made for foreign access to markets for accounting, bookkeeping, architecture, engineering and urban planning.

Separately, trade ministers of countries belonging to the Asia-Pacific Economic Cooperation Forum (APEC) issued a declaration in Korea June 3 calling for the achievement of “a critical mass of initial and revised offers in services” by July. They said they would create a “framework for a collective assessment thereof with a level of ambition that will lead the way to creating commercially meaningful new business opportunities.”

The APEC trade ministers also endorsed the use of the Swiss Formula for cutting tariffs in the non-agriculture market access (NAMA) talks with “coefficients to be negotiated for tariff reduction applied on a line-by-line basis.” In the agriculture talks (see story page 3), they endorsed a tiered formula and the treatment of sensitive products “with necessary flexibility.”

\* \* \* BRIEFS: \* \* \*

TRADE PEOPLE: Bidding war is over. Former ITA Under Secretary for International Trade Grant Aldonas will be joining D.C. law firm of Akin Gump Strauss Hauer & Feld.

CEMENT: Binational NAFTA panel May 26 remanded back to ITA portions of its Sixth Administrative Review of antidumping order on gray portland cement and clinker from Mexico. Noting that Court of Appeals for Federal Circuit in *AK Steel v. U.S.* upheld agency’s methodology in other parts of the case, panel limited its remand to issues concerning course of trade and different merchandise.

SOFTWOOD LUMBER: Canada May 31 asked NAFTA panel to review ITA’s Section 129 recommendation on how it would comply with previous panel rulings on its antidumping decisions on softwood lumber. Separately, WTO June 1 agreed to create panel to review U.S. implementation of WTO rulings against dumping decision. U.S., however, blocked Ottawa’s request for permission to apply sanctions on U.S. goods in retaliation. U.S. asked for establishment of arbitration panel to determine appropriate amount of sanctions. Meanwhile, ITA June 1 released preliminary results of Second Administrative Review of CVD and AD orders on Canadian lumber. It cut subsidy rate to 8.18% from 17.18% in final results of First Administrative Review. It also cut individual dumping margins for most respondents.

CHLORINATED ISOCYANURATES: ITC June 3 made final determination on 6-0 voted that dumped imports of chlorinated isocyanurates from China and Spain are injuring U.S. industry.

BYRD PAYMENTS: Customs in June 1 Federal Register issued notice calling for parties that filed or supported antidumping and CVD cases to get certified to be eligible for next distribution of FY 2005 collected duties under Byrd Amendment. In 2004, Customs distributed over \$200 million on 1,800 claims. In 2003, it gave out \$330 million to 1,800 claimants. This year, over 4,000 shrimp fishermen, including almost 200 named Nguyen, were identified as potentially eligible for sharing liquidated duties collected on imports of frozen and canned shrimp.

OFAC: As part of settlement agreement with OFAC, Fidelity Investments has agreed to pay \$63,853 civil fine for operating accounts in Iran from in 1999 and 2000.

CHINA: During speech in Beijing June 2, Commerce Secretary Carlos Gutierrez warned Chinese to improve protection of intellectual property rights or face WTO complaint. “We do not consider intellectual property rights violations to be a matter for negotiation,” he declared.

EDITOR’S NOTE: With this issue, *Washington Tariff & Trade Letter* celebrates its 24<sup>th</sup> anniversary of publishing. Our thanks go to all our loyal subscribers, sources, friends and colleagues who have supported and helped us over these exciting and rewarding years.